

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 03-32063-WRS

Chapter 7

TERRY MANUFACTURING  
COMPANY INC.,

Debtor

**MEMORANDUM DECISION**

This Chapter 7 case came before the Court for hearing upon the Application to Employ the law firm of Christian Small, LLP, as attorney for the Committee of Unsecured Creditors. (Doc. 709). Objections to the application were filed by the Bankruptcy Administrator (Doc. 710), Cintas Corporation (Doc. 721), First Bank and Southtrust Bank (Doc. 726).

Cintas, First Bank and Southtrust all oppose the application insofar as the Unsecured Creditor's Committee seeks to compensate its lawyer from funds of the estate. They cite 11 U.S.C. § 705 and In re: Dominelli, 788 F.2d 584, 586 (9<sup>th</sup> Cir. 1986), for the proposition that this is not appropriate. Section 705 of the Bankruptcy Code provides the creditor's committee only a very limited role in cases under Chapter 7, as opposed to the broader powers given such committees in cases under Chapter 11. Cf. 11 U.S.C. § 1102-03. As Congress chose to limit the role of the creditor's committee in cases under Chapter 7, it would be inappropriate to grant it powers more broad than that which was intended by Congress. Id., see also, In re: Energy Cooperative, Inc., 95 B.R. 961, 964 (Bankr. N.D. Ill. 1989); In re: Kel-Wood timber Products, Co., 88 B.R. 93, 95 (Bankr. E.D. Va. 1988); In re: Willbet Enterprises, Inc., 43 B.R. 90, 92 (Bankr. E.D. Pa. 1984).

The Creditor's Committee cites a decision from a Bankruptcy Court in Pennsylvania in support of its position. Sable, Makoroff & Gusky, P.C. v. White (In re: Lyons Transportation Lines, Inc.), 162 B.R. 460 (Bankr. W.D. Pa. 1994). That case has two distinguishing features which are not present here. First, the Court in Lyons Transportation notes that no timely objection was made by any party in interest. Id. at 463–64. The Court in Lyons Transportation was no doubt troubled by the proposition that other parties could lay back, accept the benefit of counsel's labor and then claim that the Code did not authorize their employment. Second, the court cited extraordinarily complicated issues. Id. at 463. There is no showing that there are any complicated issues which would justify the granting of this application. Even if one assumes that Lyons Transportation is good law, its holding is so limited that it does not support the application of the creditor's committee.

There are additional policy reasons which do not favor employment of counsel for the unsecured creditor's committee here. In a case under Chapter 7, the Trustee is given broad powers to liquidate the debtor's estate. 11 U.S.C. § 704. In the instant case, the Trustee opposes continued litigation of the suit for which counsel is to be hired. It would be grossly inefficient for a bankruptcy estate to fund competing litigation. If applications such as this were granted on a routine basis, bankruptcy estates would no doubt be diminished through excessive and protracted litigation. Even if one accepts the proposition set forth in Lyons Transportation, that the Bankruptcy Court has discretion to grant an application such as this, there are no facts here

which would support such an extraordinary exercise of the Bankruptcy Court's inherent powers.

The Court will, by way of a separate order, deny the application to employ counsel.

Done this 7<sup>th</sup> day of October, 2004.

/s/ William R. Sawyer  
United States Bankruptcy Judge

c: Eric Breithaupt, Attorney for Unsecured Cred. Comm.  
Teresa R. Jacobs, Bankruptcy Administrator  
Joe A. Joseph, Attorney for Cintas  
Timothy Lupinacci, Attorney for SouthTrust/First Bank